

## **APPENDIX J**

### **SMALL BUSINESS PROGRAM**

#### **INTRODUCTION**

It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in contracts awarded, consistent with efficient contract performance. The Small Business Program is covered in FAR Part 19.

#### **SMALL BUSINESS DEFINITIONS**

**“Concern”** is any business entity organized for profit with a place of business located in the U.S. and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor.

**“Emerging Small Business”** is a small business concern whose size is no greater than 50% of the numerical size applicable to the North American Industry Classification System (NAICS) code assigned to a contracting opportunity.

**“Fair Market Price”** is a price based on reasonable costs under normal competitive conditions and not on lowest possible cost.

**“HUBZone Concern”** is a concern that is a small business, is owned and controlled by one or more U.S. citizen or by a Community Development Corporation or Indian tribe, and has its principal office located within a historically underutilized business zone (which includes lands on recognized Indian reservations). Also, at least 35% of its employees must reside in a HUBZone. A certification is required from the SBA.

**“North American Industry Classification System (NAICS) Code”** is the North American Industry Classification System. It replaced the Standard Industrial Classification (SIC) system.

**“Small Business Administration (SBA)”** was created by Congress in 1953 to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns." Congress stipulated that the SBA would ensure small businesses a "fair proportion" of government contracts.

**“Service-Disabled Veteran-Owned Small Business Concern”** is a small business concern that is at least 51% owned and operated by one or more service-disabled veterans whose management and daily business operations are controlled by service-disabled veterans. Service-disabled veterans are veterans with a disability that is service connected. A certification is not required from the SBA.

**“SBA Size Standards”** define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for “small business” concerns. Size standards have been established for types of economic activity, or industry, generally under the NAICS. Size standards are stated in either number of employees or average annual receipts. NAICS assigns codes to all economic activities within twenty broad sectors. The size standard for most A-E services is \$4 million (see Chapter 2, paragraph 2-4).

**“Small Business Concern”** is a domestic firm that is independently owned and operated, not dominant in its field of operation, and can qualify under the size standards of the NAICS codes.

**“Small Disadvantaged Business Concern”** is a business, which is, at least 51% owned by one or more socially and economically disadvantaged individual(s). A certification is required from the SBA. Socially disadvantaged: is an individual who has been subjected to racial or ethnic prejudice or cultural bias (Black, Hispanic, Native, Asian Pacific or Subcontinent Asian Americans). Economic Disadvantaged: is an individual denied access to capital and credit opportunities because of their identification as a member of a specific group. The SBA certifies SDBs for participation in procurements aimed at overcoming the effects of discrimination. SBA certifies small businesses that meet specific social, economic, ownership, and control eligibility criteria. Once certified, the firm is added to an on-line registry of SDB-certified firms maintained in Pro-Net. Certified firms remain on the list for three years. Contracting officers and large business prime contractors may search this on-line registry for potential suppliers.

**“Veteran-Owned Small Business Concern”** is a small business concern that is at least 51% owned and operated by one or more veterans and whose management and daily business operations are controlled by veterans. Veterans are persons who served in the active military, naval, or air service, and who were discharged or released under conditions other than dishonorable. A certification is not required from the SBA.

**“Women-Owned Small Business Concern”** is a small business concern that is at least 51% owned, controlled, and operated by one or more women and whose management and daily operations are controlled by one or more women. A certification is not required from the SBA.

## **SMALL BUSINESS PROGRAMS APPLICABLE TO A-E CONTRACTS**

**SBA 8(a) Business Development Program:** The SBA’s business development program for socially and economically disadvantaged business concerns is commonly called the 8(a) program based upon Section 8(a) of the Small Business Act. Through the 8(a) program, small companies owned by socially and economically disadvantaged persons could obtain contracts and other assistance from SBA in developing their business. USACE fulfills its mandate to support the 8(a) program by identifying and offering to the SBA projects deemed capable for performance by 8(a) contractors.

All members of the acquisition team (engineering, small business, contracting, and PMs) must participate in a timely manner in the planning and execution of the 8(a) program. The acquisition team, including the customer when practicable, shall select those projects that are

considered suitable for the 8(a) program. The selection should be made well in advance of the start of the fiscal year. The final selection decision rests with the contracting officer.

A-E procurements reserved for the 8(a) program must utilize the selection procedures outlined in the Brooks A-E Act, including public announcement, technical evaluations, ranking of firms, and holding discussions with the three most highly qualified firms. The Contracting Officer should have a reasonable expectation of receiving a sufficient number of responses from 8(a) firms to proceed with an 8(a) procurement. 8(a) A-E services with an estimated contract value, including options, greater than \$3 million will follow the standard project offering procedures to the SBA (FAR 19.8). For proposed awards below \$3 million, the contracting command must request approval from the SBA National Office. No dollar threshold exists for tribally owned firms or an Alaska Native Corporation.

**Small Business Set-Asides:** The small business set-aside program consists of a procurement action in which only small business firms can compete for the contract. Small business set-asides procedures for A-E services vary considerable depending upon (1) the type of work, (2) the estimated contract amount, (3) whether the firm is an emerging small business and (4) the applicability of the Small Business Competitiveness Demonstration Program (SBCDP).

All A-E acquisitions equal to or less than \$50,000 must be set-aside for emerging small businesses, provided the contracting officer determines there is a reasonable expectation of a sufficient number of firms to proceed under Brooks A-E Act procedures. The test of reasonable expectation is a judgement call made by the contracting officer, based on procurement history and knowledge of the industry.

A-E services in connection with a military construction project or a military family housing project must be set-aside for small business if they are under \$85,000 and must be awarded under unrestricted competition if they are \$85,000 or over. The dollar threshold does not apply to 8(a) procurements.

The SBCDP tests the ability of small businesses to compete successfully in unrestricted competition in four designated industry groups (DIG), including A-E services. The program established a small business participation goal of 40 percent of the contract awards and requires each participating agency to reestablish small business set-asides whenever small business awards in any individual DIG falls below the 40 percent threshold. The DoD reviews contract award statistics on a yearly basis for the purpose of reestablishing or suspending set-aside procedures. The DoD is currently below the goal for A-E services and accordingly reestablished small business set-aside procedures.

There are two exemptions from the requirements of the SBCDP: (1) A-E services for military construction projects or military family housing projects; and (2) A-E procurements above \$50,000 must continue to be considered for placement under the 8(a) Program and the HUBZone Program.

**The Small Business Subcontracting Program:** Any A-E firm receiving a contract for more than \$500,000 and that has subcontracting possibilities, must submit an acceptable

subcontracting plan. If the successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror will be ineligible for award. Each subcontracting plan must include separate percentage goals for using small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Subcontracting plans also include assurances that the A-E firm will submit periodic reports so the contracting officer can determine the extent of compliance with the subcontracting plan, as well as submit required Standard Form (SF) 294 and SF 295 subcontract reports.

The command subcontracting goals are considered in negotiation of subcontracting plans, but do not necessarily have to be met for the plan for an individual contract to be acceptable. The subcontracting goals should be tailored to the specific circumstances of each contract, including the subcontractors proposed (and accepted) team on the SF 255 and the magnitude and nature of the work. FAR 19.705-4(c) cautions against setting unrealistically high goals that could "significantly increase the Government's cost or seriously impede the attainment of acquisition objectives."

**The Indian Incentive Program:** This program strives to provide opportunities to Indian organizations and Indian-owned economic enterprises. When authorized under the terms of the contract, any tier contractor may receive an incentive payment of 5 percent of the amount subcontracted to an Indian organization or Indian-owned economic enterprise.

**The Women-Owned Small Business (WOSB) Program:** This program came into being as a result of Executive Order 12138 signed in May 1979 which prescribed a national initiative to assist WOSB entrepreneurs. The Acquisition Streamlining Act (P.L. 103-355) of 1994 established a 5% government-wide goal for contract and subcontract awards to WOSB for each fiscal year. The Small Business Reauthorization Act of 2000 (PL 106-554) allows agencies to "restrict competition" when soliciting for supplies or services in industries where WOSB are underrepresented. The SBA is currently drafting regulations for the program.

**The HUBZone Empowerment Contracting Program:** The HUBZone Empowerment Contracting Program stimulates economic development and creates jobs in urban and rural communities. This program provides for contracting opportunities for certain qualified small business concerns located in distressed communities and promotes private sector investment and employment opportunities in these communities. These preferences go to small businesses that obtain HUBZone certification in part by employing staff that live in a HUBZone. The SBA regulates and implements the program, determines which businesses are eligible to receive HUBZone contracts, maintains a listing of qualified HUBZone small businesses agencies can use to locate vendors, and adjudicates protests of eligibility to receive HUBZone contracts.

A-E procurements reserved for the HUBZone Program must utilize the selection procedures outlined in the Brooks A-E Act, including public announcement, technical evaluations, ranking firms, and holding discussions with the three most highly qualified firms. The Contracting Officer should have a reasonable expectation of receiving a sufficient number of responses from HUBZone firms to proceed with a HUBZone procurement. Also, large

businesses must address their HUBZone subcontracting efforts in their Small Business Subcontracting Plan.

**Veteran-Owned Small Business and Service-Disabled Veteran-Owned Small Business**

**(SD/VOSB) Program:** This program was established by the Veterans Entrepreneurship and Small Business Development Act of 1999. The purpose of the program is to provide technical, financial, and procurement assistance by expanding existing and establishing new assistance programs for veterans and service-disabled veterans who own or operate small businesses and requires Government personnel to encourage participation of VOSB and SD/VOSB in prime Government contracts and subcontracts. There is no set-aside preference for these categories. Large business contractors must address their VOSB subcontracting efforts in their Small Business Subcontracting Plan.

**Pro-Net:** Pro-Net is an Internet-based database of information on 200,000 small, disadvantaged, 8(a), HUBZone, and women-owned businesses. The SBA manages Pro-Net, which is available to government contracting personnel as well as large DoD prime contractors as a resource for seeking potential small business sources. Pro-Net is an electronic gateway of procurement information for and about small businesses. It is a search engine for contracting officers, a marketing tool for small firms and a link to procurement opportunities and important information. It is designed to be a "virtual" one-stop-procurement-shop. Pro-Net is free to and state government agencies as well as prime and other contractors seeking small business contractors, subcontractors and/or partnership opportunities. Businesses profiled on the Pro-Net system can be searched by NAICS codes, key words, location, quality certifications, business type, ownership race and gender, etc. The Internet address is <http://pro-net.sba.gov>.

**Sub-Net:** The SBA has established a new web site for locating and posting subcontracting opportunities called Sub-Net. (Access available through the Pro-Net home page.) While the web site is designed primarily as a place for large businesses to post solicitations and notices, agencies, state and local governments, non-profit organizations, colleges and universities, and even small businesses can also use it for the same purpose. The new web site has shifted the traditional marketing strategy from the shotgun approach to one that is more focused and sophisticated. Instead of marketing blindly to hundreds of prime contractors, with no certainty that any given company has a need for their product or service, small businesses can now use their limited resources to identify concrete, tangible opportunities and then bid on them.

**Order of Precedence:**

Less than \$50,000	Set-aside for emerging small business*
Greater than \$50,000	Consider for placement under the 8(a) and HUBZone Programs*
For MILCON & Military Family Housing, \$50,000 to \$85,000	Consider small business set-aside*
Greater than \$50,000, other than MILCON & Military Family Housing	Consider small business set-aside under SBCDP*
Unrestricted after consideration of 8(a) Program, HUBZone Program and SBCDP	
* Provided the contracting officer determines that there is a reasonable expectation of at least three most highly qualified firms in accordance with Brooks A-E Act procedures.	